

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**SARAH E. HULL**

Claimant

VS.

**WICHITA RACQUET CLUB, INC.**

Respondent

AND

**AMERICAN MOTORIST INSURANCE CO.**

Insurance Carrier

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Docket No. 251,209

**ORDER**

Respondent appeals from the March 1, 2000, preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. The Administrative Law Judge granted claimant benefits in the form of medical treatment, with Bernard Hearon, M.D., as the authorized treating physician, and temporary total disability compensation, if claimant is taken off work by the authorized physician. Respondent contends claimant's ongoing problems and need for additional treatment stem from an intervening injury suffered on October 11, 1999, while playing frisbee golf.

**ISSUES**

- (1) Did claimant's intervening accident on October 11, 1999, contribute to her need for treatment?
- (2) Do certain other defenses apply?

Respondent raises certain other defenses as an issue, but in its brief argues only that claimant's current symptoms stem from the frisbee incident and not from the injury at work and, therefore, do not arise out of and in the course of her employment with respondent. That is the only issue before the Appeals Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant began working for respondent in February of 1997 in its nursery staff. On April 26, 1999, while holding a small child, claimant tripped over a bench, falling on her right shoulder. She was treated by Jerry Niernberger, D.O., and later referred to Douglas T. Davidson, M.D. Dr. Davidson treated claimant through September 11, 1999, at which time he released her without restrictions, finding she had reached maximum medical improvement. An MRI of claimant's right shoulder performed May 26, 1999, was described by neurologist Joseph R. Miranda, M.D., as being normal.

Claimant returned to work for respondent, performing her regular duties until October 11, 1999. On that date, while playing frisbee golf with her family, claimant experienced a sudden onset of pain just as she released a frisbee. The pain described by claimant was so severe that she felt her shoulder had dislocated and she fell to the ground, nearly fainting. Claimant testified that, as she hit the ground, she believes the shoulder popped back into place.

Claimant again returned to Dr. Davidson and Dr. Niernberger. Dr. Niernberger requested a repeat MRI, which was performed on November 9, 1999. This MRI, also reviewed by Dr. Miranda, was described as abnormal, with the doctor noting a mildly heterogeneous signal in the supraspinatus tendon. Dr. Miranda opined that this may be due to tendonitis or a partial rotator cuff tear.

Claimant advised Dr. Niernberger she was frustrated with the treatment by Dr. Davidson, alleging that Dr. Davidson had provided no help. Claimant also testified at preliminary hearing that Dr. Davidson told her there was nothing wrong with her. However, a review of Dr. Davidson's medical report of October 14, 1999, indicates that he felt a three-week course of physical therapy, three times a week, would be appropriate and, if claimant did not improve, he would consider scoping her shoulder. Also contained in that report was Dr. Davidson's opinion that this injury was not related to claimant's workers' compensation injury, but rather to an underlying problem, perhaps, he speculated, a ligamentous laxity.

Claimant was then referred by Dr. Niernberger to Bernard Hearon, M.D., for shoulder surgery which was scheduled for March 6, 2000. A question on Dr. Hearon's medical statement form asked whether claimant's condition was "caused or aggravated by his/her work." This was answered "yes." This was the only mention in Dr. Hearon's records regarding the cause of claimant's shoulder injuries.

The Administrative Law Judge, finding Dr. Hearon to be the more credible physician, noted that his medical statement of February 14, 2000, that claimant's condition was

caused or aggravated by her work, was more persuasive than the opinion of Dr. Davidson or the MRI readings.

Respondent objected to the Administrative Law Judge's reliance on the one-word opinion of Dr. Hearon versus the opinion provided by Dr. Davidson and the differing MRI reports.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove, by a preponderance of the credible evidence, entitlement to the benefits requested. K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

The conflict in this matter is between the opinion of Dr. Davidson, wherein he states claimant's current condition is not related to her work, and that of Dr. Hearon, whose opinion consists of one word on a medical statement form. Dr. Davidson had the opportunity to treat claimant after both the April 26 fall and the October 11 frisbee golf injury. The Board also notes, in comparing the MRI performed in May 1999 with that performed in November 1999, that there is a clear abnormality on the November 1999 MRI which was not present in May. In addition, after the frisbee incident, claimant described grating and crepitus in the shoulder. This crepitus and popping was noted by Dr. Niernberger during his October 24, 1999, examination. Dr. Niernberger opined claimant may have suffered a right shoulder cartilage tear.

The injury described by claimant in her discovery deposition of February 10, 2000, caused claimant so much pain that she nearly fainted, falling to the ground. Claimant also stated that, after throwing the frisbee, her arm went completely numb.

In contrast, claimant's testimony at the preliminary hearing on February 15, 2000, described the incident as only throwing with light exertion, with the frisbee traveling no more than 10 to 20 feet. The preliminary hearing testimony does not describe claimant nearly passing out, experiencing nearly total numbness in the extremity, or feeling like her shoulder was dislocated. The description provided by claimant at the discovery deposition involves a substantially more traumatic injury than that provided to the Administrative Law Judge.

After reviewing the evidence, including the medical records of all the doctors and the MRI reports, the Appeals Board finds the frisbee incident of October 11, 1999, to be the precipitating injury which necessitated claimant's need for ongoing treatment, including the surgery recommended by Dr. Hearon. Therefore, the Order of the Administrative Law Judge, finding this injury to have arisen out of and in the course of claimant's employment, is reversed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 1, 2000, should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2000.

---

BOARD MEMBER

c: James B. Zongker, Wichita, KS  
P. Kelly Donley, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director